

Bicameralism and Political Legitimacy

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To constitute a democratic order based on freedom and equality, the political system of a society needs to reflect its complexity. Processes of collective decision-making need to allow for the political expression of societal differentiation and diversity. Bicameralism is a crucial mechanism in this regard. Most basically, bicameralism means a diversification of political institutions. It establishes yet another layer of structural complexity within the legislative branch and the actual law-making procedure. It diffuses and decentres legislative power. It allows for expressing certain aspects of political pluralism and disagreement. Although or maybe *because* bicameralism aims for legislation to be grounded in a more inclusive, comprehensive political consensus, bicameral decision-making tends to articulate conflict rather than accord. It therefore is of some intrinsic value and justification in societies that are internally heterogeneous and organized in politically self-governing sub-entities.

By creating an institutional antagonist to the unitary representation of a political subject that is the first chamber, bicameralism empowers, most commonly, regional entities that exercise limited forms of political self-government, or less typical, the estates, corporatist organisations or other civil society groups, or independent actors that are to embody honour, integrity and/or some kind of common sense. As this symposium shows, second chambers vary widely in their membership and appointment or electoral procedures. But they are usually attributed the same constitutional function – that of a mechanism of checks and balances with regard to both legislative and executive powers. As such, the involvement of a second chamber in collective decision-making is thought to promote and serve certain substantive values. Depending on the political order, bicameralism is supposed to safeguard regional autonomy, individual rights, minorities, and/or the integrity of the constitution and of the political process itself. It does so primarily by establishing veto positions that work as structural impediment to legislation.

Limiting the power of the first chamber to legislate if it aggregates such a will, however, undermines the capacity of the unitary political subject represented by this body to govern itself by means of legislation. As a result, the unitary political collective is not sovereign in its self-determination. Such limitations to the capacity of a political collective to legislate for itself can be understood as a democratic problem. Yet, if a polity recognises the existence of sub-entities that enjoy political autonomy, there is a strong argument for their institutional representation in the overall collective decision-making process – at least as far as they are affected by its outcomes. And if an institution can claim that the political positions it aggregates are the expression of a democratic will, there is a strong argument for equipping it with real powers instead of consultative functions only. The legitimacy function of democratic representation is based on the idea of *self-government*. This democratic function cannot be realised through a representative institution's exercise of an advisory role, but through its exercise of *power* only.

In bicameral systems, two forms of representation and two claims of political and social self-determination compete: It is unitary democratic representation *versus* the democratic representation of regional political entities, corporatist representation, or any of the other forms of representation that second chambers embody in practice. The competition of these claims of political legitimacy leads to the question of how to design the institutional balance in a bicameral legislature in a legitimate, democratic manner. It calls to inquire into the democratic justification of the allocation of powers in a bicameral system, i.e. the democratic legitimacy both of the power of a second chamber to block or delay legislation and the power of a first chamber to overrule such efforts. How this is evaluated depends on the concept of democracy that a society relates to. In this, concepts of bicameralism refer to very basic notions of a polity's basic structure; its unitary or compounded nature, and the order between its entirety (as represented by the first chamber) and its parts (as represented by the second chamber). There is a lot of symbolism in this, too. This is obvious when we look at the debate on the dual structure of democratic representation that the EU is based on. Whether the Council or rather the European Parliament is understood as the primary democratic institution of the EU depends to a great extent on how the relation between the EU and the Member States is conceptualised. In more general words: The design of bicameral decision-making needs to correspond to a model of political self-determination that accommodates and conceptualises the co-existence of different claims of political legitimacy according to the democratic self-conception of the society.

From a normative-theoretical perspective, second chambers whose members are appointed seem to stand for the idea of representation as *standing for* and *embodying* the political subject by sharing some of its characteristics and virtues. Hanna Pitkin has described this as *virtual* representation because it is not based on formal political accountability. Where – as in the case of forms of virtual representation – the second chamber does not compete with the first chamber as to its democratic credentials, there is a rather strong justification for a clear hierarchy: A weak claim to democratic legitimacy makes a strong argument for a limited role of the second chamber, so that it cannot veto bills in a strict sense, but can only initiate and maybe delay legislation. In turn – as I have already put forward – a second chamber's strong democratic basis argues for its empowerment as part of the legislature. Generally, strengthening a second chamber's democratic quality may seem like a good thing, as it raises the overall democratic legitimacy of a political system. But by enhancing the second chamber's political standing, it will also inevitably change the dynamics and balance within the bicameral system. Making the second chamber a real "democratic equal" to the first chamber challenges the idea of the primacy of the latter. If a hierarchical order is nevertheless retained, this can lead to an antagonism between the chambers and undermine the capacity to act collectively that is itself a democratic value. That two chambers, without any hierarchy, truly share as equals the responsibility for legislation is relatively rare. Where it holds true, as in the cases of the House of Representatives and the Senate in the US, and the European Parliament and the Council in the EU, it does not necessarily coincide with equality in terms of both chambers' democratic qualities. If powers and democratic legitimacy of a chamber of the legislature do not measure

up – and this holds true in both directions – this will usually be perceived as a democratic deficit.

What is regarded as a legitimate form of bicameralism is highly specific to the political self-understanding of a society. Yet, whatever balance of those competing claims of political legitimacy is found within a political order can become contested. This can have a lot of reasons. An increase in nationalist or regionalist sentiments, growing political polarization within society, popular disappointment with the politics and politicians of a first chamber and the executive, experiences of gridlock and inefficiency of the legislature, or perceptions of regional economic imbalances within a nation can all alter the public's attitudes towards the complex representative claims embodied in a bicameral system. The general societal understanding of how political and societal self-determination ought to be organised is subject to change over time. This drives constitutional change in general and also inspires the present trend to reform bicameral systems.

